

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 475

September 29, 1995, 10:30 a.m.
Page S-14586 Temp. Record

COMMERCE-JUSTICE-STATE APPROPRIATIONS/DBS Competitive Bidding

SUBJECT: Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill for fiscal year 1996 . . . H.R. 2076. McCain/Dorgan modified amendment No. 2816.

ACTION: AMENDMENT AGREED TO, 98-0

SYNOPSIS: As reported, H.R. 2076, the Departments of Commerce, Justice, and State, the Judiciary, and related agencies appropriations bill for fiscal year 1996, will provide a total of \$26.525 billion in new budget authority, which is 1 percent less than provided for fiscal year (FY) 1995, and which is \$4.634 billion less than the Administration requested. The Justice Department and the Judiciary will receive substantial increases in funding, and the Commerce Department, the State Department, and related agencies will receive substantial reductions in funding.

The McCain/Dorgan modified amendment would add that the Federal Communications Commission (FCC) would not use funds from this Act to take action on certain applications for the use of spectrum at 110 degrees west longitude containing 27 channels that have been set aside for Direct Broadcast Satellite (DBS) transmissions. Further, the amendment would require the FCC to dispose of that spectrum by auction (for an estimated gain of \$300 million to \$700 million), unless an alternative means of disposal would yield more money for the United States Treasury. (In 1984, Advanced Communications Corporation (ACC) was granted a license to this spectrum free-of-charge on the condition that it exercise due diligence in developing a DBS system. After 6 years, that license was extended. On April 26, 1995, the FCC determined that ACC had not exercised due diligence and refused to grant another extension. That decision is under appeal.)

Those favoring the amendment contended:

The McCain amendment is about proper stewardship over a scarce resource held by the American public--the broadcast spectrum. It is intended to provide guidance to the FCC on the appropriate disposition of a band of spectrum that has been set aside for DBS services. Prior to 1993, the United States did not allocate spectrum by auction; instead, it allocated it free-of-charge, usually under

(See other side)

YEAS (98)				NAYS (0)		NOT VOTING (1)	
Republican (53 or 100%)		Democrats (45 or 100%)		Republicans (0 or 0%)	Democrats (0 or 0%)	Republicans (0)	Democrats (1)
Abraham	Helms	Akaka	Inouye				Glenn ²
Ashcroft	Hutchison	Baucus	Johnston				
Bennett	Inhofe	Biden	Kennedy				
Bond	Jeffords	Bingaman	Kerrey				
Brown	Kassebaum	Boxer	Kerry				
Burns	Kempthorne	Bradley	Kohl				
Campbell	Kyl	Breaux	Lautenberg				
Chafee	Lott	Bryan	Leahy				
Coats	Lugar	Bumpers	Levin				
Cochran	McCain	Byrd	Lieberman				
Cohen	McConnell	Conrad	Mikulski				
Coverdell	Murkowski	Daschle	Moseley-Braun			VOTING PRESENT(1)	
Craig	Nickles	Dodd	Moynihan			Mack	
D'Amato	Packwood	Dorgan	Murray				
DeWine	Pressler	Exon	Nunn				
Dole	Roth	Feingold	Pell				
Domenici	Santorum	Feinstein	Pryor				
Faircloth	Shelby	Ford	Reid				
Frist	Simpson	Graham	Robb				
Gorton	Smith	Harkin	Rockefeller				
Gramm	Snowe	Heflin	Sarbanes				
Grams	Specter	Hollings	Simon				
Grassley	Stevens		Wellstone				
Gregg	Thomas						
Hatch	Thompson						
Hatfield	Thurmond						
	Warner						

EXPLANATION OF ABSENCE:

1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:

AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

negotiated terms requiring its productive use. In 1984, the FCC divided a segment of the spectrum to be used for DBS services. Companies were then allocated sections at no cost on the agreement that they exercise "due diligence" in constructing DBS systems. Only 3 blocks of the spectrum allocated covered the entire United States. Advanced Communications Corporation (ACC) received one such block, and DirecTV and Echostar were given the other two. DirecTV has built and is operating a DBS system; Echostar's will be operational next year. ACC, though, has done nothing with its allocation for the past 10 years. Four years ago, it asked for and received a 4-year extension on its original allocation, even though it had not even begun developing a DBS system.

In the summer of 1994, the FCC began auctioning spectrum as required by a 1993 law. To date, about half the spectrum to be auctioned has been disposed of for more than \$8 billion. On September 16, 1995, ACC entered into an agreement to sell its allocation to TCI for \$45 million. Three months later, ACC again asked for an extension on its construction permit. The International Bureau of the FCC, noting that spectrum was now being auctioned off instead of being given away, concluded that it had to use a new, tougher definition of due diligence, and ruled that because ACC had done nothing to build a DBS system it would not receive another extension. The full FCC then began consideration of a plan to give TCI this spectrum in return for \$5 million and the return of much less valuable spectrum. The FCC has reached an impasse on that plan; 2 commissioners favor the deal, 2 oppose it, and one is undecided.

The McCain/Dorgan amendment would break this impasse in favor of the American taxpayers. The value of this spectrum at auction is estimated to be between \$300 million and \$700 million. Obviously, auctioning it off would return far more than \$5 million to the Treasury. The ACC did not exercise due diligence in using this allocation, and it only had a limited time-frame--6 years--in which to build a system in the first place. Even after a 4-year extension it had done nothing. In our opinion, by the clear reading of the contract they have absolutely no claim to this spectrum allocation. It is one thing to extend a contract at a time when it is the United States' policy to still give allocations for free, and it is quite another to extend a contract after the policy has changed to one of auctioning them off to the highest bidder.

We have nothing against TCI or ACC. To our knowledge, none of the companies involved are based in our States. If TCI or ACC submit the best bids, then we will have nothing against them receiving this spectrum. As the amendment has been modified, it would allow the FCC to dispose of this spectrum in another manner besides holding an auction if it were to determine it could get more money following such an approach. Again, we have no problem with TCI, ACC, or any other company winning this spectrum by an alternate approach, just so long as the return to the American taxpayers is maximized. Our only goal with this amendment is to make certain that we do not simply give away this scarce resource. On that basis, we urge adoption of this amendment.

While favoring the amendment, some Senators expressed the following reservations:

Our colleagues should be aware that the issue is not as clear-cut as has been claimed. As a general rule, any seemingly minor change in communications policy can mean millions or billions of dollars in new profits for some companies, and can mean just as great losses for other companies. In this instance, the general policy of automatic renewal of allocations was changed in 1994, to ACC's detriment. The ruling in that case is still under appeal. ACC would like to sell that spectrum to TCI. TCI would like to acquire it and begin DBS satellite service as quickly as possible. DirecTV is the only company that currently provides coast-to-coast DBS services. Next year, another company, Echostar, will also provide such service. These two companies do not want a third competitor. Additionally, the National Rural Telecommunications Cooperative, which has an exclusive contract with DirecTV to provide DBS services in rural areas, is very much opposed to TCI gaining this spectrum. Our point is that Senators should be wary about expressing their opinion on this highly technical matter without first holding hearings. Who benefits in whose States may be having an effect on the opinions expressed in this debate. This note of caution aside, however, we can support this amendment as modified, because it no longer requires the FCC to auction this spectrum. Instead, it requires it to maximize the return for the American taxpayers. We of course do not object to protecting the interests of the American taxpayers, so we will vote in favor of this amendment.

No arguments were expressed in opposition to the amendment.